

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAMES A. SMITH, JR.,

Plaintiff,

v.

WILLIAM POLLARD, et al.

Defendants.

ORDER

Case No. 16-cv-9-slc

Case No. 16-cv10-slc

Plaintiff James Smith consented to magistrate judge jurisdiction in both of these cases and they have been reassigned to me to conduct all proceedings and resolve all dispositive and non-dispositive issues that arise. In both cases, I have denied multiple motions by plaintiff for assistance in recruiting counsel, and have made other rulings that prompted him to file notices of appeal in both cases. (His appeal in the habeas case (16-cv-9) was dismissed by the Seventh Circuit as premature, and his appeal in his § 1983 case remains pending.) Smith's dissatisfaction with my rulings has prompted him to file a motion in both cases to withdraw his consent to magistrate jurisdiction. (Dkt. 38 in 16-cv-10; dkt. 32 in 16-cv-9).

Under 28 U.S.C. § 636, magistrate judges may preside over civil lawsuits in which all of the parties have consented. There is no provision in § 636 or any other statute, however, that permits a party to "withdraw" consent to magistrate judge jurisdiction once it has been granted and a case has been reassigned. Accordingly, I will deny Smith's request to "withdraw" consent.

That being said, I will construe Smith's request as a motion for recusal under 28 U.S.C. § 455(a). Section 455(a) requires me to recuse myself "in any proceeding in which [my] impartiality might be reasonably questioned," including when I have a personal bias or prejudice against a party. I have a duty to recuse when presented with valid reasons, but I also have a duty

to refuse recusal when justification is lacking. *N.Y. City Hous. Dev. Corp. V. Hart*, 796 F.2d 976, 980 (7th Cir. 1986). Here, I have no personal bias against Smith and Smith has identified no basis for my recusal in his motion. My rulings in both cases thus far have been based solely on my analysis of the relevant facts and legal authority. Thus, there is no basis for believing that my impartiality can be reasonably questioned. Accordingly, Smith's motion will be denied.

ORDER

IT IS ORDERED that Plaintiff James Smith's Motion to Withdraw Consent (dkt. 38 in 16-cv-10; dkt. 32 in 16-cv-9) is DENIED.

Entered this 16th day of September, 2016.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge